

Amendments to the Drawings:

The attached replacement drawing sheets make changes to Figs. 13-17 and 23 and replaces the original sheets with Figs. 13-19 and 22-23.

Attachments: Replacement Sheets (3)

REMARKS

By this Amendment, claim 1 is canceled, without prejudice to or disclaimer of the subject matter recited therein, and claims 2-36 and 43 are amended. Accordingly, claims 2-48 are pending in this application. The drawings and the specification are also amended, as discussed below.

The subject matter of claim 1 is incorporated into each of claims 36 and 43, thus making claims 36 and 43 independent claims.

Applicant gratefully acknowledges the indication that claims 45-47 are allowed and that claims 43 and 44 include allowable subject matter. As claim 43 is rewritten in independent form, withdrawal of the objection and allowance of claims 43 and 44 is respectfully requested.

The Office Action objects to the drawings because reference number 8 is used to denote two different elements. Corrected formal drawings are submitted herewith to replace the second use of reference number 8 with reference number 4 in Figs. 13-17 and 23. Accordingly, withdrawal of the objection to the drawings is respectfully requested.

The Office Action also objects to the specification because reference number 8 is used to denote two different elements. The specification is also amended in accordance with the changes to the drawings. Accordingly, withdrawal of the objection to the specification is respectfully requested.

The Office Action rejects claims 1-6, 12, 18, 23, 25, 27, 32, 34-39 and 48 under 35 U.S.C. §102(b) over U.S. Patent No. 2,876,475 to Mann. This rejection is respectfully traversed.

Independent claim 36 recites *inter alia* "a receptacle containing a substance configured to be applied to a portion of a human body" and "an applicator configured to apply

said substance on a portion of the human body." It is respectfully submitted that Mann fails to disclose or suggest these claimed features.

The Office Action improperly ignores such features by alleging that they constitute "statements of intended use." Applicant respectfully disagrees with this characterization and submits that the language used in the claims reflect a structural feature of the device. In particular, the substance is recited as being configured to be applied to a portion of a human body. This requires the composition to be structured so that it is compatible with the human body. For example, a caustic substance is not configured to be applied to a portion of a human body. Thus, this language is a structural feature in that it delineates the substance recited in claim 36. Similarly, the applicator is recited as being configured to apply said substance on a portion of the human body. This requires the applicator to be structured so that it is compatible with the human body and adapted to apply a substance to the human body. Thus, this language is a structural feature in that it delineates the applicator recited in claim 36.

"All words in a claim must be considered in judging the patentability of that claim against the prior art." MPEP §2143.03 (citing *In re Wilson*, 424 F.2d 1382, 1385, 165 USPQ 494, 496 (CCPA 1970)). The Office Action improperly ignores the language of the claims requiring the substance and the applicator to be configured as claimed. In doing so, the Office Action applies a reference that does not include is not configured to apply substance on a portion of the human body. As set forth in MPEP §2141.02, claim 36 must be considered as a whole. By not affording patentable weight to this language in claim 36, the Office Action violates this principle.

The Office Action further asserts that "the Mann device is capable of applying a substance to the human body should a user so choose to employ the device." Applicant respectfully disagrees. The Mann device is not intended in normal use for applying a

substance to the human body. Because the Mann device is designed to apply wax to flooring, it would be inherently dangerous to use the Mann device as suggested by the Office Action. A person of ordinary skill in the art would not appreciate or even consider such a use of the Mann device. The Office Action's assertion improperly ignores the requirement that the prior art must be considered in its entirety by asserting a capability that is not taught or suggested by Mann. See MPEP §2141.03.

Not only is the Mann device not configured to apply substance on a portion of the human body, the Mann device does not comprise a receptacle containing a substance configured to be applied to a portion of a human body, as recited in claim 36. As disclosed by Mann, the device includes a wax reservoir 19 that contains flooring wax to be applied to flooring. Flooring wax is not a substance configured to be applied to a portion of a human body. The composition of flooring wax is undesirable for, if not incompatible with, application to a portion of a human body. Mann does not disclose or suggest any other substance. Thus, Mann cannot reasonably be considered to disclose or suggest a receptacle containing a substance configured to be applied to a portion of a human body, as recited in claim 36.

Therefore, Applicant respectfully submits that claim 36 is patentable over Mann. Claims 2-6, 12, 18, 23, 25, 27, 32, 34-39 and 48 are patentable at least in view of the patentability of claim 36 from which they depend, as well as for the additional features they recite. Accordingly, withdrawal of the rejection is respectfully requested.

Rejoinder of claims 7-11, 13-17, 19-22, 24, 26, 28-31, 33 and 40-42 upon allowance of claim 36, from which they variously depend, is respectfully requested.

In view of the foregoing, it is respectfully submitted that this application is in condition for allowance. Favorable reconsideration and prompt allowance of claims 2-48 are earnestly solicited.

Should the Examiner believe that anything further would be desirable to place this application in even better condition for allowance, the Examiner is invited to contact the undersigned at the telephone number set forth below.

Respectfully submitted,



William P. Berridge
Registration No. 30,024

Klifton L. Kime
Registration No. 42,733

WPB:KLK/hs

Attachments:
Replacement Sheets (3)

Date: February 7, 2006

OLIFF & BERRIDGE, PLC
P.O. Box 19928
Alexandria, Virginia 22320
Telephone: (703) 836-6400

<p>DEPOSIT ACCOUNT USE AUTHORIZATION Please grant any extension necessary for entry; Charge any fee due to our Deposit Account No. 15-0461</p>
--